

98CV01238-EHN-MO

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED FOOD & COMMERCIAL WORKERS
LOCAL 342-50, AFL-CIO, CLC,

98 CV 1238

Petitioner,

MEMORANDUM

- against -

AND
ORDER

Y&P ISRAEL GLATT,

Respondent.

-----X
VLADECK, WALDMAN, ELIAS & ENGELHARD, P.C.
(Patricia McConnell, of counsel)
1501 Broadway, Suite 800
New York, New York 10036
for petitioner.

Y&P ISRAEL GLATT
4907 13th Avenue
Brooklyn, New York 11219
respondent.

NICKERSON, District Judge:

This is a motion by petitioner United Food &
Commercial Workers, Local 342-50, AFL-CIO, CLC (the
Union) for an order pursuant to the United States
Arbitration Act, 9 U.S.C. § 9, confirming an
arbitration award in favor of the Union against
respondent Y&P Israel Glatt (Y&P), and for costs and

attorney's fees. Although properly served, Y&P has failed to appear in this case.

The Union is a labor organization that represents certain employees of Y&P. The Union and Y&P entered into a collective bargaining agreement (the Agreement) covering the terms and conditions of the employment of Union employees of Y&P. The Union alleges that Y&P violated this agreement by failing to pay dues to the Union and failing to remit contributions on behalf of its employees to the UFCW Local 50 Welfare Fund, UFCW Local 342 Legal Fund and UFCW Local 342 Safety-Education-Cultural Fund (the Funds).

Articles 18 and 25 of the Agreement provide that disputes concerning Y&P's failure to make contributions the Funds, or arising out of a breach of the Agreement, will be resolved through arbitration. Accordingly, a hearing was held before Arbitrator George F. Sabatella on September 30, 1997. Although Y&P received due notice of the hearing, it failed to appear.

The Arbitrator issued an order finding that the dispute was arbitrable under the Agreement. The Arbitrator held that Y&P violated the Agreement by failing to pay dues to the Union and contributions to the Funds for the period between April 1997 and August 1997. He awarded the Union \$11,008.38 in damages, attorney's fees, and costs, and ordered that Y&P pay the Union forthwith.

To date, Y&P has only paid \$4,810.00. The Union seeks an order from this Court confirming the award and directing Y&P to comply with the award.

In this circuit "confirmation of an arbitration award is a summary proceeding that merely makes what is already a final arbitration award a judgment of the court." Ottley v. Schwartzberg, 819 F.2d 373, 377 (2d Cir. 1987). The United States Arbitration Act, 9 U.S.C. § 9 (the Act), requires a federal court sitting within the district within which an arbitration award was made to "grant . . . an order [confirming the award] unless the award is vacated, modified, or

corrected." An award can only be vacated or modified if it was procured by fraud, if the arbitrator was guilty of partiality or misconduct, if the arbitrator exceeded his power in granting the award, or if there was an evident material miscalculation of figures in the award. 9 U.S.C. §§ 10--11. Absent such circumstances, the court may not review the merits of the award. United Steelworkers of Am. v. Enter. Wheel & Car Corp., 363 U.S. 593, 596, 80 S. Ct. 1358, 1360 (1960).

Notice of a motion to vacate, modify, or correct an award "must be served upon the adverse party or his attorney within three months after the award is filed or delivered." 9 U.S.C. § 12. Once the three month period had expired, an attempt to vacate an arbitration award cannot be made even in opposition to a later motion to confirm. See Florasynth, Inc. v. Pickholz, 750 F.2d 171, 174--75 (2d Cir. 1984).

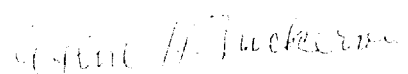
Y&P has made no motion to vacate, modify or correct the September 20, 1997 award, and the three-

month window in which it was permitted to do so has long since passed. The award cannot now be vacated, modified, or corrected. The Union's petition to confirm the arbitration award is granted.

Although attorney's fees are not routinely awarded in labor disputes, a court can properly award attorney's fees when "a party has unjustifiably refused to abide by an arbitrator's award." Synergy Gas Co. v. Sasso, 853 F.2d 59, 65. Y&P has unjustifiably refused to pay the award, forcing the Union to go to court to enforce an obligation clearly owed. Y&P has offered no defense for its failure to comply with the award; indeed, it has not made an appearance in this Court, although it was properly served. The Union is hereby awarded costs and attorney's fees incurred in this proceeding. Counsel for petitioner may submit an affidavit as to attorney's fees.

So ordered.

Dated: Brooklyn, New York
August 11, 1998


Eugene H. Nickerson, U.S.D.J.